

# HOUSE . . . . . No. 3603

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***John W. Scibak***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act increasing transparency by pharmacy benefits managers.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	<i>1/21/2011</i>

# HOUSE . . . . . No. 3603

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By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 3603) of John W. Scibak relative to prescription drug management. Public Health.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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An Act increasing transparency by pharmacy benefits managers.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Section 1. Definitions. For the purposes of this act, the words and phrases used in this  
2 act shall have the meanings as defined below:-

3           “Average wholesale price” means the average value at which wholesalers sell drugs to  
4 physicians, pharmacies, and other customers.

5           “Contracted rate” is the reimbursement rate that a specific pharmacy or pharmacy chain  
6 contractually agrees to accept for processing prescription drug claims on behalf of a specific  
7 pharmacy benefits manager;

8           “Covered entity” means a health insurer, a health benefit plan, a health maintenance  
9 organization, a health program administered by a state agency in the capacity of provider of  
10 health coverage, or any other entity which receives state funding for the purpose of providing  
11 health coverage to individuals or groups;

“Effective rate” is the actual blended performance rate of discount for the AWP, accounting for differences in reimbursement rate among individual pharmacies and the net effect of drugs that process at a customary level (the pharmacy’s retail price of a drug), which may be lower than

the negotiated average wholesale price discount;

“Maximum allowable cost” means the unit price established by a pharmacy benefits manager (PBM) included on the PBM’s drug list developed for a PBM’s client;

"Pharmacy benefits manager" or "PBM" shall mean a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor or health program administered by a department of the Commonwealth.

“Transparency” shall mean the full disclosure of all PBM costs and revenue streams including, but not restricted to acquisition costs of pharmaceuticals based upon the actual inventories per unit cost or the published wholesale acquisition cost, the full value of retail and mail order pharmacy discounts, drug-level rebates, administrative fees, service fees, management fees, funding of clinical programs, and research/educational grants.

Section 2. (a) Notwithstanding any general or special law to the contrary, a covered entity shall not enter into a new contract or renew an existing contract with a pharmacy benefits manager to manage the prescription drug coverage provided under such plan or insurance

coverage, or to control the costs of such prescription drug coverage, unless the PBM satisfies the following requirements:

1) the PBM agrees to charge the covered entity no more than the amount paid to pharmacies in the PBM's retail network for each claim dispensed under the plan, including all brand and generic drugs ;

2) the PBM will provide their contracted rate and blended effective rate for brand and generic drugs within the geographic region;

3) the PBM will provide, upon request, a complete copy of the then-current maximum allowable cost list being used with respect to retail and mail-order claims.

4) the PBM will pass through to the covered entity 100% of all formulary rebates, market-share rebates, administrative fees/credits, and other revenue that the covered entity's utilization enables the PBM to earn;

5) the PBM agrees to grant the covered entity full rights to audit their pharmacy claims utilization data, contracts and arrangements with retail network pharmacies, contracts and arrangements with pharmaceutical manufacturers;

b) Information disclosed by a covered entity or a PBM under this section is considered confidential and shall not be disclosed.